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No.

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IN THE

United States Circuit Court of Appeals
For the Ninth Circuit

BOISE-PAYETTE LUMBER COMPANY,
a Corporation,

Appellant,

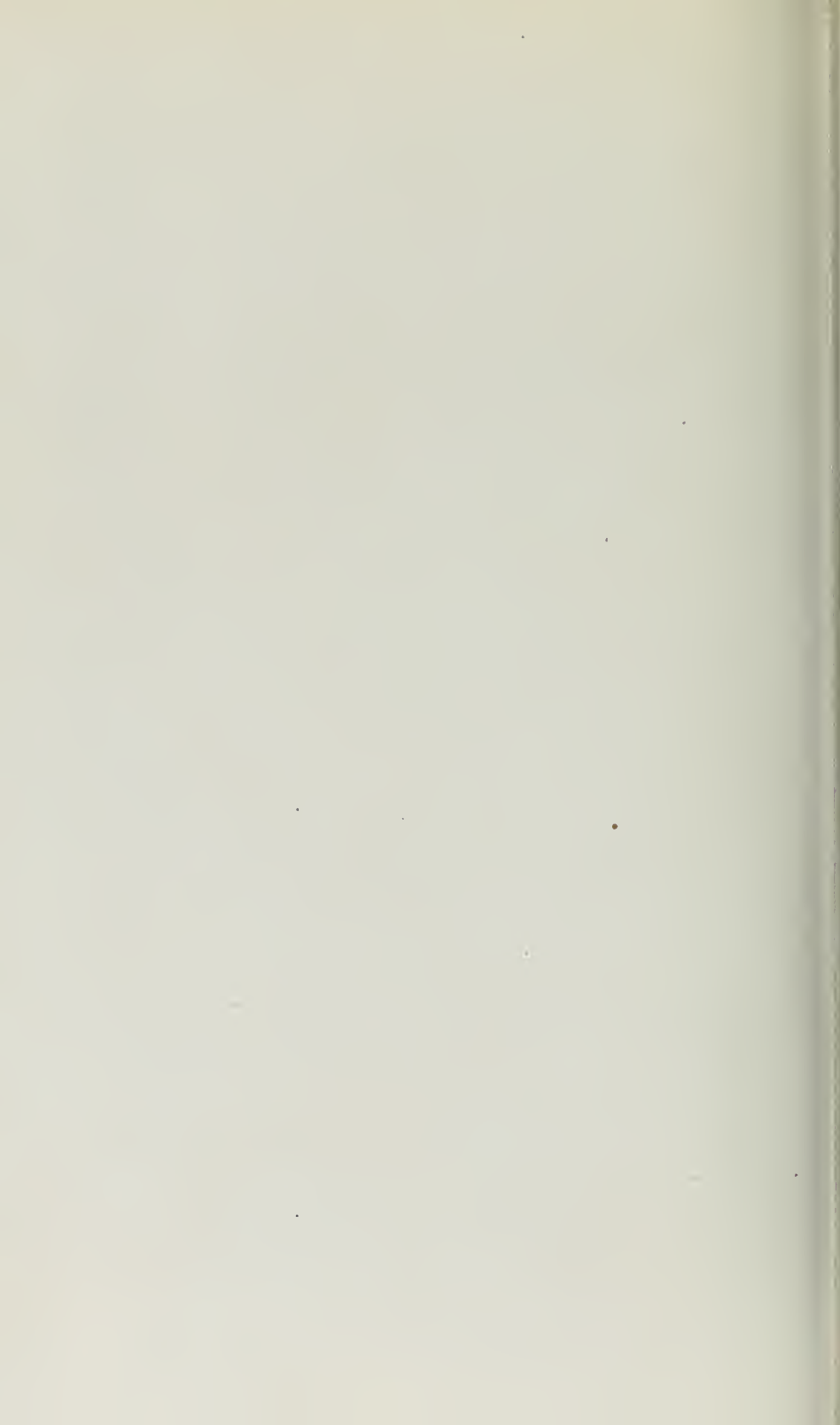
vs.

HALLORAN-JUDGE TRUST COMPANY,
a Corporation, as Trustee,

Appellee.

Transcript of the Record

*Upon Appeal from the United States District Court
for the District of Idaho, Eastern Division.*



IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

BOISE-PAYETTE LUMBER COMPANY,
a Corporation,

Appellant,

vs.

HALLORAN-JUDGE TRUST COMPANY,
a Corporation, as Trustee,

Appellee.

Transcript of the Record

*Upon Appeal from the United States District Court
for the District of Idaho, Eastern Division.*

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD:

J. H. PETERSON,
T. C. COFFIN,
Pocatello, Idaho.
Attorneys for Appellant.

EDWIN SNOW,
Boise, Idaho.
Attorney for Appellee.

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*In the District Court of the United States for the
District of Idaho, Eastern Division.*

HALLORAN-JUDGE TRUST COMPANY,
a Corporation, as Trustee,

Plaintiff,

vs.

PINGREE LAND COMPANY, a Corpora-
tion; MATKINS OPERATING COM-
PANY, a Corporation; BOISE-PAY-
ETTE LUMBER COMPANY, a Cor-
poration; C. M. BLOCKER; S. E. WIL-
KIE; ROLAND D. WILKIE; FRED A.
WILKIE and E. P. JENSEN,

Defendants.

No. 303.

AGREED STATEMENT UNDER EQUITY
RULE NO. 77.

WHEREAS, The Boise-Payette Lumber Com-
pany, a corporation, one of the defendants above
named, has been allowed an appeal to the United
States Circuit Court of Appeals for the Ninth Cir-
cuit, sitting at San Francisco, California, and the
parties hereto are desirous of presenting an agreed
statement pursuant to Equity Rule No. 77.

NOW THEREFORE, It is agreed by and be-
tween the parties hereto

1. That the issue presented upon this appeal is the priority of the trust deed of the appellee, Halloran-Judge Trust Company, and the Materialman's Lien of the appellant, Boise-Payette Lumber Company.

2. That it was aptly alleged and proved at the trial of this cause that the mortgage or deed of trust of the appellee, the Halloran-Judge Trust Company, which covered among other property the Southwest Quarter of the Southwest Quarter of Section 14, the Northwest Quarter of the Northwest Quarter of Section 23, the Northeast Quarter of the Northeast Quarter of Section 22, and the Southeast Quarter of the Southeast Quarter of Section 15, all in Township Six (6) North, Range Thirty-four (34) East, Boise Meridian, in Idaho, was made, executed and delivered by the Pingree Land Company to the said Halloran-Judge Trust Company, on the 31st day of December, 1919, and was thereafter recorded in the office of the County Recorder of Jefferson County, Idaho, in which county all the land included within the Trust Deed is situated, on the 26th day of January, 1920, and that said Trust Deed is a first and prior lien upon all the land in this agreed statement described, subject only to the decision of the Court as to whether or not the claim of the Boise-Payette Lumber Company, the appellant, is superior thereto;

3. That it was aptly alleged and proved at the trial of this cause that the claim of lien of the ap-

pellant, Boise-Payette Lumber Company, was in all respects under the laws of Idaho at the time of the trial of this cause, a valid and subsisting lien against the property in Paragraph 2 hereof described, all of which are required for the convenient use and occupation of the building for which materials were furnished by the Boise-Payette Lumber Company, the appellant, and all of which are subject to its lien; that on the 30th day of December, 1919, the predecessor in interest of the Pingree Land Company, a corporation, the grantor in the mortgage or deed of trust of the appellee herein, viz: the Owsley Carey Land & Irrigation Company entered into a contract with Fred A. Wilkie, as original contractor for the completion of the irrigation system of the said Owsley Carey Land & Irrigation Company, which included the erection of a pump house upon the land in Paragraph 2 hereof described; that on the first day of April, 1920, he made a sub-contract with the Boise-Payette Lumber Company for the furnishing of material for the building of the said pump house upon the land above described; that under and by virtue of the said sub-contract with Fred A. Wilkie last above described, the appellant, the Boise-Payette Lumber Company, began furnishing material on April 1st, 1920, and continued thereafter to furnish material until June 24th, 1920, at which time there was due it under the said sub-contract, the sum of \$1311.84, which with payments made and

proper charges for cost of preparation and filing of lien, interest and attorney fees allowed in the above entitled Court, amounted on September 14th, 1921, to the sum of \$1348.17, no part of which has been paid; that the claim of lien was filed in the proper public office within the time required by the laws of the State of Idaho, and action for the foreclosure of the said lien was instituted within the time required by the laws of the State of Idaho, and the said lien was on September 14th, 1921, a valid and subsisting lien in all respects.

4. That in the trial of this cause the appellee and plaintiff, Halloran-Judge Trust Company, prayed for a foreclosure of the mortgage or deed of trust held by it, and the appellant and defendant, Boise-Payette Lumber Company, by cross-complaint prayed for the foreclosure of its lien set forth herein, and that all necessary and proper parties for the relief prayed for by both the parties hereto were present in the Court which tried this cause.

5. That each party to this appeal, viz: the Halloran-Judge Trust Company, a corporation, as trustee, and the Boise-Payette Lumber Company, a corporation, concedes in all respects the validity of the other parties' claim, but questions only the priority claimed by the adverse party, the Halloran-Judge Trust Company asserting the priority of the mortgage or the deed of trust for the reason that it was executed and delivered and recorded prior to the time when the Boise-Payette Lumber Company, the

appellant, began furnishing materials for the property in question, and the appellant, Boise-Payette Lumber Company asserting the priority of its claim of lien for the reason that it dates back to December 30, 1919.

The parties hereto submit the foregoing agreed statement of facts to the Court, with the inclusion of the memorandum decision and the decree, as the record on appeal in this cause, and pray the Court to approve and allow the same.

Dated this 12th day of October, 1921.

J. H. PETERSON,

T. C. COFFIN,

Attorneys for Appellant, Boise-Payette Lumber Company.

EDWIN SNOW,

Attorney for Appellee, Halloran-Judge Trust Company.

The foregoing agreed statement of facts under the provisions of Equity Rule No. 77, is hereby approved.

Dated at Pocatello, Idaho, this 12th day of October, 1921.

FRANK S. DIETRICH,

United States District Judge.

Endorsed: Filed Oct. 13, 1921.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

MEMORANDUM DECISION.

Aug. 30, 1921.

Edwin Snow, Attorney for Plaintiff.

Peterson & Coffin, Attorneys for Defendant, Boise-Payette Lumber Company.

DIETRICH, DISTRICT JUDGE:

As trustee the plaintiff seeks foreclosure of a trust deed upon the irrigation system of a Carey Act project constructed and owned by the defendant Pingree Land Company, hereinafter called the owner. One of the defendants named is the Boise-Payette Lumber Company, and by a cross-complaint it seeks to foreclose a lien for materials furnished to one Fred A. Wilkie, a defendant, who had a contract with the owner by which he was to perform the labor and furnish the materials for the completion of the irrigation system. As between the plaintiff and this lien claimant the case is submitted upon a stipulation of facts, and the only question is which is superior, the lien of the claimant or of the trust deed.

The stipulation is to the effect that the trust deed was executed on December 31, 1919, and recorded in the proper office, on January 26, 1920. It is further stipulated that the averments of the claimant's cross-complaint are true, and from this pleading it appears that Wilkie entered into the construction contract referred to, on December 31, 1919, and that at the request of Wilkie the claimant did, on or about the 1st day of April, 1920, begin to fur-

nish the materials for the price of which the lien is now claimed. In the claimant's brief it is assumed that the further fact is shown that Wilkie began the performance of his contract immediately after its execution, but while there is such an averment in the claimant's answer, there is no allegation to that effect in the cross-complaint, and the stipulation is only that the averments of the cross-complaint are true, not those of the answer. It may be doubted whether the fact is material, but however that may be, it is not shown when Wilkie actually commenced work under his contract.

Upon the facts stated it is thought the question is so clearly concluded by *Pacific States Savings Company v. Dubois*, 11 Idaho, 319, 83 Pac. 513, that extended discussion is unnecessary. This Court is bound by the construction thus placed upon the state statute, and of course, the state statute is controlling. It must therefore be held that the claimant's lien is inferior to that of the trust deed.

The claimant refers to a California decision and to the text in Bloom on Mechanics Liens, and also to the case of *Continental and Commercial Trust and Savings Bank v. Corey Brothers Construction Company*, (arising in this district), 208 Fed. 976. But in view of the decision of the Supreme Court of Idaho it is needless to comment upon decisions from other states; and as to the *Corey Brothers* case, it would seem sufficient to observe that, as appears upon the face of the decision, the question

here considered was not presented to the Circuit Court of Appeals. But I have taken the trouble to examine the record in this Court, and I find that while the trust deed in that case was dated August 27, 1909, and was recorded September 3rd of the same year, and the contract of the Portland Cement Company, one of the lien claimants, bears date and was actually executed on September 18th, and while further the contract of the Corey Brothers Construction Company was dated and actually executed on August 26th, there was an oral agreement had between the owner and Corey Brothers Construction Company as early as June, which was in substance the same as the written instrument executed on August 26th, and that thereupon Corey Brothers Construction Company commenced work, and continued both before and after the execution of the written agreement; and that at the time of the oral agreement with Corey Brothers Construction Company the owner authorized it to make arrangements for the necessary cement, and that accordingly it did enter into an agreement for the owner with the Portland Cement Company, pursuant to which this company began to furnish material before the execution of the trust deed, and actually delivered certain consignments upon the ground where it was to be used as early as September 2nd, the day before the trust deed was recorded. These facts clearly took the case out of the range of the principle announced in the Dubois case, and it was

doubtless for that reason that the point was not raised in the Circuit Court of Appeals.

Endorsed: Filed Aug. 30, 1921.

W. D. McREYNOLDS, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

DECREE.

This cause having, by stipulation of counsel and order based thereon, been transferred from the Eastern Division of this District to the Southern Division, came on to be heard this term at Boise, Idaho. Evidence was received, and it was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed as follows, to-wit:

1. That the mortgage, or deed of trust, dated the 31st day of December, 1919, made by the defendant Pingree Land Company to the complainant, and which said mortgage or deed of trust is sought to be foreclosed in this action, is a first and paramount lien, prior and superior to the lien or interest of any of the parties hereto, and secures the payment of the sums hereinafter found due upon the following described property, to-wit:

All the real and personal property of the Pingree Land Company, including water rights, ditches, canals, laterals, rights of way, easements, incomes and choses in action owned by said Pingree Land Company on the 31st day of December, 1919, or

which it has since acquired, and particularly that certain irrigation system known as the Second Owsley Irrigation Project in Jefferson County, Idaho, more particularly described as follows:

All the right, title and interest defined and granted to the Owsley Carey Land and Irrigation Company by the terms of a certain indenture in writing between the Mud Lake Canal Company, an Idaho corporation, and said Owsley Carey Land and Irrigation Company, dated July 8, 1919, whereby there was granted to said Owsley Carey Land and Irrigation Company an undivided interest in and to certain irrigation canals and a certain pump house which the parties to such indenture had theretofore constructed for use in common, said canals and pump house being more particularly described as follows:

INTAKE. That certain intake canal beginning at a point in Mud Lake, situated approximately North 39°, 42' East 5714'' from the section corner common to Sections 10, 11, 14 and 15, Township 6 North, Range 34 East of Boise Meridian, and extending generally in a southerly direction to the pump house.

PUMP HOUSE. A certain concrete pump house situated at or near the Northeast corner of Section 22, Township 6 North, Range 34 East of Boise Meridian.

MAIN CANAL. A certain section of main canal beginning at the pump house above described

and extending south approximately three miles.

WEST BRANCH CANAL. That certain section of canal four miles in length, being the first four miles of what is known as the West Branch Canal, beginning at the Southeast corner of Section 34, Township 6 North, Range 34 East of the Boise Meridian, and extending West to the Southeast corner of Section 36, Township 6 North, Range 33 East of the Boise Meridian.

The right, title and interest in the structures above defined, so granted to the Owsley Carey Land and Irrigation Company by the terms of said indenture, being an undivided interest in and to said *intake*, said main canal and said west branch canal to the extent necessary for the conveyance and distribution of 205 cubic feet of water per second, and an interest in said *pump house* comprising the right to set, install, operate and maintain therein three electric pumping units, each consisting of pump and motors with all requisite electric and other equipment, and having an aggregate pumping capacity of approximately 205 cubic feet per second, and the right to use the said building freely without let or hindrance for the purpose of pumping the waters of Mud Lake and distributing the same to water users under said Second Owsley Project, and together also with the right to enlarge said building and to install additional pumping units therein in case it shall be desired so to do at the proper expense of the parties

so making such extension or addition, the undivided interest in said pump house and canals being subject, however, to all the obligations with respect to proportionate expense of operation and maintenance as set forth and defined in said indenture between said Mud Lake Canal Company and said Owsley Carey Land and Irrigation Company, dated July 8, 1918, and recorded in Book 54, page 214, Records of Jefferson County, Idaho.

2. The whole of that certain extension of said West Branch Canal beginning at the Southeast corner of Section 36, Township 6 North Range 33 East of Boise Meridian, and extending West about six miles.

3. All laterals, rights of way, structures, bridges, pipe lines, flumes and measuring devices owned by said Pingree Land Company and used or intended to be used in connection with said irrigation project.

4. Three certain hydro-electric pumping units, consisting of pump and motor situated at the pump house above described, together with all tools, appliances and electric or other equipment owned by said Pingree Land Company on said December 31, 1919, or since acquired by it and used or intended to be used in connection with the operation of the pumping units above described.

5. That certain water permit No. 8468 granted by the State Engineer of Idaho for the appropriation and diversion of 187.5 cubic feet per second of the waters of Mud Lake in Jefferson County, Idaho,

said permit being of record in the office of the Commissioner of Reclamation of the State of Idaho, in Book 27 of Permits at page 8468 thereof.

Also all rights, grants, interests, privileges, easements and franchises owned, acquired or possessed by said Pingree Land Company on December 31, 1919, or which it has subsequently acquired under the contract of the Owsley Carey Land and Irrigation Company with the State Board of Land Commissioners of the State of Idaho, dated February 28, 1919, and all amendments thereto, including the right and privilege to sell shares or water rights in said Second Owsley Irrigation Project evidenced by shares of stock in a corporation in said contract referred to, known as Matkins Operating Company, and all of said Pingree Land Company's right as in said contract defined to all unsold shares of stock of said Matkins Operating Company, and all of said stock now in the hands of the complainant or in the possession of the receiver heretofore appointed in this cause; and all rights acquired or owned by said Pingree Land Company on December 31, 1919, or subsequently acquired by it under that certain contract dated January 2, 1918, between the State of Idaho and the United States of America segregating the lands referred to therein and under any other contracts which since December 31, 1919, may have been executed by said Pingree Land Company and the State of Idaho relating to the irrigation of lands which may have been or

may be segregated by the United States of America for that purpose.

Also all other waters, water rights and appropriations of water owned by said Pingree Land Company on December 31, 1919, or thereafter acquired by it, and all rights of way, dikes, reservoirs, canals, ditches, laterals, headgates and flumes and the entire irrigation system of the Pingree Land Company owned by said Pingree Land Company on December 31, 1919, or which was thereafter acquired or constructed by it in Jefferson County, Idaho.

All the right, title and interest originally held by said Pingree Land Company in and to the following described contracts heretofore made by said Pingree Land Company for the sale to land owners of water rights or shares in said irrigation system and constituting to the extent of the unpaid portion of the purchase price of said water rights first liens on the land irrigated thereunder, and heretofore deposited with the complainant and assigned by the defendant Pingree Land Company to the complainant, being the contracts below enumerated, there being specified in this decree the dates, numbers, names of the several contracting purchasers, description of lands covered, and unpaid balances of principal, to-wit:

Date No.	Entry No.	Purchaser	Description	Acres	Unpaid Principal
10-9-19 2	110	Nick Arsen	Lots 3 & 4 Sec. 2, Tp. 5 N. R. 33 E.	80	\$ 5400.00
10-9-19 3	145	Arthur G. Croft	NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 31, Tp. 6 N. R. 34 EBM. (Lot 3)	39.89	2692.57
10-10-19 4	98	Harry M. Morey	Lots 1 & 2	159.58
10-9-19 5	106	Perry Trip	E $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 31, Tp. 6 N. R. 34 EBM.		
10-9-19 6	107	J. S. Hall	NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 31, Tp. 6 N. R. 34 EBM.	40	2700.00
10-9-19 7	125	John A. Ryan	SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 11, Tp. 5 N. R. 33 EBM.	40	2700.00
10-9-19 8	99	Elmer E. Gillett	Lot 4, Sec. 31, Tp. 6 N. R. 34 EBM.	33.30	2247.75
10-9-19 9	126	Harry Pursel	SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 34, Tp. 6 N. R. 33 EBM.	33.33	2249.77
10-9-19 10	123	James Morris	SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 31, Tp. 6 N. R. 34 EBM.	33.33	2249.77
10-9-19 11	111	R. R. Deabenderfer	Lots 1 & 2		
10-9-19 13	109	Clayton L. Atwood	N $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 4, Tp. 5 N. R. 33 EBM.	160	10800.00
10-9-19 14	124	Jed McFerson	N $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 35, Tp. 6 N. R. 33 EBM.	80	5400.00
10-9-19 15	140	Ray L. Done	NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 3, Tp. 5 N. R. 33 EBM.	40	2700.00
			SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 34, Tp. 6 N. R. 33 EBM.	33.33	2249.77
			S $\frac{1}{2}$ NE $\frac{1}{4}$		
10-9-19 16	103	H. J. Gregerson	N $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 12, Tp. 5 N. R. 33 EBM.	160	10800.00
10-9-19 17	131	Jonathan F. Johnson	SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 35, Tp. 6 N. R. 33 EBM.	40	2700.00
10-9-19 18	117	W. W. Robinson	W $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 11, Tp. 5 N. R. 33 EBM.	80	5400.00
10-9-19 21	101	Edgar Buchanan	E $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 35, Tp. 6 N. R. 33 EBM.	80	5400.00
10-9-19 22	115	Albert M. Mayer	NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 33, Tp. 6 N. R. 33 EBM.	40	2700.00
			S $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 35, Tp. 6 N. R. 33 EBM.	66.66	4499.55

10-9-19	23	116	James Bergesen	$N\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 34, Tp. 6 N. R. 33 E B M.	80	5400.00
12-5-19	24	143	John W. Brandt	NW $\frac{1}{4}$ Sec. 7, Tp. 5 N. R. 33 EBM	160	10800.00
10-9-19	26	138	Frank Pingree	SW $\frac{1}{4}$ Sec. 35, Tp. 6 N. R. 33 EBM	146.66	9899.55
10-9-19	27	100	E. J. Slater	Lot 1 Sec. 5, Tp. 5 N. R. 33 EBM	40	2700.00
10-9-19	28	134	Donald Campbell	$N\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 30, Tp. 6 N. R. 33 EBM	80	5400.00
10-9-19	30	118	Joe Kramer	Lots 1 and 2, Sec. 31, Tp. 6 N. R. 33 EBM	65.52	4422.60
10-9-19	31	144	John P. Elliott	$N\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 34, Tp. 6 N. R. 33 EBM	80	5400.00
10-9-19	32	139	Myron Swendsen	NW $\frac{1}{4}$ Sec. 35, Tp. 6 N. R. 33 EBM	160
10-9-19	33	142	Anna Hershey	SE $\frac{1}{4}$ SW $\frac{1}{4}$		
10-9-19	34	127	James F. Brown	SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 7, Tp. 5 N. R. 34 EBM	80	5400.00
10-9-19	35	112	George L. Walker	SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 34, Tp. 6 N. R. 33 EBM	33.33	2241.77
10-9-19	38	108	John Tikker	and 4, Sec. 3, Tp. 5 N. R. 33 EBM	80	5400.00
10-9-19	39	113	Will A. Peterson	NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 32, Tp. 6 N. R. 33 EBM	40	2700.00
10-9-19	40	141	C. R. Delauter	S $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 30, Tp. 6 N. R. 33 EBM	80	5400.00
10-9-19	41	122	Frank T. Brandt	NE $\frac{1}{4}$ Sec. 34, Tp. 6 N. R. 33 EBM	160	10800.00
11-1-19	42	133	Justin Tolman	NE $\frac{1}{4}$ Sec. 7, Tp. 5 N. R. 33 EBM	160	10800.00
10-9-19	45	102	Moroni E. Brown	E $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 34, Tp. 6 N. R. 33 EBM	80	5400.00
10-9-19	47	105	G. M. Hall	SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 34, Tp. 6 N. R. 33 EBM	33.33	2249.77
10-9-19	48	119	D. O. Taggart	NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 11, Tp. 5 N. R. 33 EBM	40	2700.00
10-9-19	49	104	Alfred E. Campbell	W $\frac{1}{4}$ NE $\frac{1}{2}$ Sec. 18, Tp. 5 N. R. 34 EBM	80	5400.00
10-9-19	50	114	Lester J. Bell	Lot 2, Sec. 5, Tp. 5 N. R. 33 EBM	40	2700.00
				W $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 20, Tp. 6 N. R. 33 EBM	80	5400.00

SE $\frac{1}{4}$ Sec. 2, Tp. 5 N. R. 32 EBM.....	160	10800.0010-17-19	51	121	Rose Mullyaly
SE $\frac{1}{4}$ Sec. 14, Tp. 5 N. R. 32 EBM.....	160	10800.0010-17-19	52	120	Alta Bean
E $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 18, Tp. 5 N. R. 34 EBM.....	80	5400.0010-17-19	53	135	J. M. Taggart
W $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 34, Tp. 6 N. R. 33 EBM.....	80	5400.0011- 1-19	54	132	John H. Tolman
NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 3, Tp. 5 N. R. 33 EBM.....	40	2700.0011- 8-19	55	129	Thos. W. Andrews
NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 3, Tp. 5 N. R. 33 EBM.....	40	2700.0011- 8-19	56	128	James V. Andrews
NE $\frac{1}{4}$ Sec. 33, Tp. 6 N. R. 33 EBM.....	80	5400.0011-20-19	57	137	M. R. Adams
E $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 28, Tp. 6 N. R. 33 EBM.....	80	5400.0011-28-19	59	136	G. R. Wille
NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 35, Tp. 6 N. R. 33 EBM.....	40	2700.0011-12-19	60	130	R. W. Swope
N $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 33, Tp. 6 N. R. 33 EBM.....	80	5400.0012- 8-19	61	146	Jules M. King
SW $\frac{1}{4}$ Sec. 33, Tp. 6 N. R. 33 EBM.....	146.66	9899.5512-12-19	62	147	Max P. Splinter
N $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 29, Tp. 6 N. R. 33 EBM.....	80	5400.0012-13-19	63	148	J. J. Jenkins
S $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 29, Tp. 6 N. R. 33 EBM.....	80	5400.0012-13-19	64	149	Earl C. Reinhardt
NW $\frac{1}{4}$ Sec. 32, Tp. 6 N. R. 33 EBM.....	160	10800.0012-17-19	66	150	Max Brodie
SE $\frac{1}{4}$ Sec. 29, Tp. 6 N. R. 33 EBM.....	160	10800.0012-16-19	68	151	H. G. Price
SW $\frac{1}{4}$ Sec. 28, Tp. 6 N. R. 33 EBM.....	160	10800.0012-16-19	69	152	Samuel H. Price
NE $\frac{1}{4}$ Sec. 29, Tp. 6 N. R. 33 EBM.....	160	10800.0012-31-19	70	153	Ann Matkins
NW $\frac{1}{4}$ Sec. 28, Tp. 6 N. R. 33 EBM.....	160	10800.0012-31-19	71	154	Mrs. Olga S. Matkins
NE $\frac{1}{4}$ Sec. 32, Tp. 6 N. R. 33 EBM.....	160	10800.0012-31-19	72	155	Effie N. Maybury
NE $\frac{1}{4}$ Sec. 21, Tp. 6 N. R. 33 EBM.....	160	10800.0012-31-19	73	156	William H. Mitchell
SE $\frac{1}{4}$ Sec. 32, Tp. 6 N. R. 33 EBM.....	146.66	9899.5512-31-19	74	157	Alexander Johnston
Lots 1 and 2 &		12-31-19	75	158	Arch Brown
S $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 1, Tp. 5 N. R. 32 EBM.....	160	10800.00			
NW $\frac{1}{4}$ Sec. 13, Tp. 5 N. R. 32 EBM.....	160	10800.0012-31-19	76	159	T. R. Taylor

12-31-19	77	160	J. E. Burnett	SE $\frac{1}{4}$ Sec. 12, Tp. 5 N. R. 32 EBM.....	160	10800.00
12-31-19	78	161	L. C. Vermillion	E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$		
12-31-19	79	162	H. A. Marrow	NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 11, Tp. 5 N. R. 33 EBM.....	160	10800.00
12-31-19	80	163	R. H. Bailey	NW $\frac{1}{4}$ Sec. 10, Tp. 5 N. R. 33 EBM.....	160	10800.00
				SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 5; S $\frac{1}{2}$ SW $\frac{1}{4}$		
12-31-19	81	164	Wm. S. Mullen	SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 4, Tp. 5 N. R. 33 EBM.....	160	10800.00
				Lots 3 and 4		
12-31-19	82	165	H. A. Wishard	S $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 1, Tp. 5 N. R. 32 EBM.....	160	10800.00
12-31-19	83	166	J. C. Allard	NW $\frac{1}{4}$ Sec. 9, Tp. 5 N. R. 33 EBM.....	160	10800.00
12-31-19	84	167	S. F. Hobler	NE $\frac{1}{4}$ Sec. 9, Tp. 5 N. R. 33 EBM.....	160	10800.00
12-31-19	85	168	W. T. Berry	NE $\frac{1}{4}$ Sec. 8, Tp. 5 N. R. 33 EBM.....	160	10800.00
12-31-19	86	169	Guy Johnson	SW $\frac{1}{4}$ Sec. 7, Tp. 5 N. R. 33 EBM.....	160	10800.00
12-31-19	87	170	L. C. Reese	SE $\frac{1}{4}$ Sec. 7, Tp. 5 N. R. 33 EBM.....	160	10800.00
				Lot 3, E $\frac{1}{2}$ SW $\frac{1}{4}$;		
12-31-19	88	171	M. K. Dennis	SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 5 Tp. 5 N. R. 33 EBM.....	160	10800.00
12-31-19	89	172	Frank B. Sargent	NE $\frac{1}{4}$ Sec. 13, Tp. 5 N. R. 32 EBM.....	160	10800.00
				S $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 12, Tp. 5 N. R. 33 EBM.....		
				W $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 7 Tp. 5 N. R. 34 EBM.....	138.73	9364.26

II.

That there are outstanding 750 bonds of the aggregate principal amount of \$500,000.00, which said bonds are now due and payable, together with interest thereon at 7% per annum from January 1, 1920, and each of said bonds and the interest thereon is secured by the said deed of trust or indenture of mortgage, and each and every of said bonds is entitled without preference or priority of one over the other, to the benefit afforded as security by said deed of trust.

III.

That there is at the date of this decree owing and unpaid on said outstanding bonds of the defendant Pingree Land Company, and secured by said mortgage or deed of trust for principal and interest, the following amounts, no part of which have been paid, to-wit:

Principal	\$500,000.00
Interest	59,208.00

Amount due for principal and interest at date of this decree. \$559,208.00

IV.

That the complainant is entitled to a reasonable compensation for services rendered by it pursuant to the provisions of said trust deed, and to the payment or reimbursement, as the case may require, of all expenses and charges whatsoever, made, incurred or suffered by it in or about the

execution of the trust, including solicitors', counsel fees, and all other obligations incurred by it in respect to its attorneys, agents or employees; and it is ORDERED, ADJUDGED and DECREED that the reasonable compensation of the complainant in and about the premises is the sum of \$500.00, and that the complainant has made disbursements in and about the premises in the sum of \$350.00, and has incurred obligations for counsel and attorneys fees in the sum of \$5,500.00, which all parties interested have agreed is a reasonable attorney's fee to be allowed herein, all of which sums are secured by said trust deed and by the contracts deposited with complainant.

V.

That the property covered by the trust deed, including the contracts in the hands of the complainant, should be sold as an entirety and without redemption by the said Master Commissioner hereinafter named, unless the amount found due herein shall be paid prior to the date hereinafter fixed.

VI.

That the lien of the defendant Boise-Payette Lumber Company sought to be asserted herein by cross-bill, is a valid and subsisting lien upon the pump house and the lands upon which the same was erected and is now situated, to-wit: The SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of section 14; the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of section 23, the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$, section 22, and the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of section 15, all in

Township 6 North, Range 34 East of the Boise Meridian, said pump house and said lands being a part of the irrigation works herein described; that the sums secured by said lien are as follows:

Principal, \$1112.84; interest, \$74.65; cost of preparation of lien with interest thereon \$10.68; allowance for attorneys' fees, \$150.00, aggregating in all the sum of \$1348.17 at the date of this decree, but said lien of said cross-complainant Boise-Payette Lumber Company, is junior and inferior to the rights and interest of the complainant in and to the property covered by and described in said trust deed and said complainant is entitled to receive payment in full for all sums secured by the lien of its said trust deed before any sum from the proceeds of the sale of said property shall go to the said Boise-Payette Lumber Company; that the right and interest of the defendant Roland D. Wilkie, a minor, and the right and interest of each of the remaining defendants in and to said property, is junior and inferior to the rights and interest of complainant under its said trust deed.

VII.

That unless the defendant Pingree Land Company, or someone in its behalf, shall pay to the complainant on or before the 1st day of October, 1921, the several amounts found due hereunder, to-wit:

The sum of \$500.00 for compensation to complainant;

The sum of \$350.00 as and for the disbursements of complainant;

The sum of \$5,500.00 as and for the compensation of complainant's solicitors and attorneys;

The sum of \$559,208.00 as and for the amount due, with interest thereon to the date of the entry of this decree upon the bonds outstanding under said trust deed;

together with interest on said several sums at 7% from the date of the entry of this decree to the date of such payment, and shall pay to the holders thereof the amount due for principal and interest upon receiver's certificates, heretofore authorized by this Court, together with interest thereon to the date of such payment, and the costs and compensation of said receiver, it is ORDERED, that Myron Swendsen, the receiver heretofore appointed in this cause, who is hereby named as Special Master Commissioner to execute this decree, sell all of said mortgaged premises particularly described in paragraph 1 hereof, together with the contracts on deposit with the complainant, which contracts the complainant shall deliver to the said Special Master Commissioner at or before the date fixed for said sale, and said Special Master Commissioner shall give due notice of said sale by publication once each week for four consecutive weeks preceding the date of said sale in a newspaper published and in general circulation in Jefferson County, Idaho, but may proceed with such publication without waiting for the

time limited within which the said Pingree Land Company, or some one on its behalf, may make the payments herein decreed to be due and payable. Said notice of sale shall contain a description of the property to be sold and the terms of sale. The sale shall be made at the front door of the Court-house in the County of Jefferson, in the State of Idaho, being the county in which said real estate and irrigation works are situated; that all of said property, real, personal and mixed, covered by the lien of said mortgage or deed of trust, including said deposited contracts, be sold in bulk and as an entirety, and all thereof without the right of redemption, the same to all intents and purposes as though all of said property were personal property.

The Special Master Commissioner is hereby empowered to adjourn said sale at any stage of the proceedings to any room in said Court House available for that purpose and convenient for the use of said Special Master Commissioner, and said Special Master Commissioner may in his discretion adjourn the sale for any reasonable time for any reason that may seem to him good and sufficient, by announcing such adjournment and the time and place to which such sale shall be adjourned, at the time appointed for such sale, and may in like manner, from time to time, adjourn such sale without further advertisement.

The property herein directed to be sold includes all reservoirs, dams, ditches, canals, flumes, gates,

and other means for the use of water and all water rights and appropriations of water herein described or referred to, embracing and including the entire irrigation system of the defendant Pingree Land Company, and all and every part and parcel and unit thereof, and all and every right, franchise, privilege, easement, lien, immunity and incident appertaining or belonging thereto, including all rights of way and including all contracts with the State of Idaho in which said Pingree Land Company is interested, and all amendments and supplements and additions thereto, and all benefits, gains, franchises, rights, privileges and easements belonging or appertaining thereto, or arising, or to arise, therefrom, all settlers' contracts hereinbefore described, of every name and nature, now in the possession of, or under the control of the complaint, together with all rights, franchises, privileges, gains, immunities and incidents arising therefrom, including all deferred payments due or to become due thereon or thereunder, and all manner of security for such payments, and especially all shares of stock of the Matkins Operating Company now owned by Pingree Land Company, and now in the possession of, or under the control of the complainant or of the receiver appointed herein.

Upon the sale of the property herein provided to be sold, any party to this suit and any holder or holders of bonds secured by said trust deed, or

any committee of bondholders, may become a purchaser or purchasers at said sale.

No bid shall be provisionally accepted at such sale by the Special Master Commissioner from any bidder who shall not have deposited with the Special Master Commissioner at or prior to the time of the same the sum of \$10,000 in cash or approved certified check. The purchaser at said sale shall also pay in case at or prior to the time of confirmation of said sale, such additional amount in cash as shall be required to pay in full the expenses of the sale including the compensation of the Special Master Commissioner; all outstanding obligations incurred by the receiver, the amount of which is hereafter to be determined; all valid claims for labor and material furnished and performed within six months prior to the appointment of the receiver herein in the maintenance and operation of said irrigation system, the amount of which is hereafter to be determined; costs of suit and the charges, compensations, allowances and disbursements of the complainant including allowance for attorney's fees. Certificates of indebtedness heretofore authorized by the Court and issued by the receiver may be accepted as cash in payment of said purchase price to the amount of the par or face value thereof with accrued interest thereon.

The Court fixes no upset price for said sale, but the Court reserves jurisdiction to confirm or not confirm any sale provisionally accepted by the Spe-

cial Master Commissioner on the coming in of his report of sale.

Any deposit made by an unsuccessful bidder shall be by the Special Master Commissioner returned to him; and any deposit made by the successful bidder shall be applied on the purchase price, and a deposit made by the successful bidder may be forfeited in the event such successful bidder shall fail to comply with the terms and conditions of the sale, and in such event the Court may resell the premises, property, rights, interests, assets and franchises hereby directed to be sold; but in case the sale shall not be confirmed by the Court, any deposits or payments made by the purchaser or purchasers, or his or their successors or assigns, shall be returned to the bidder.

The balance of the purchase money, or that part of the purchase money not herein required to be paid in cash, and up to the amount of plaintiff's claim, may be paid by the purchaser or purchasers either in cash, or in bonds and the respective coupons belonging thereto, secured by said mortgage or deed of trust made by Pingree Land Company to the complainant, and bearing date December 31, 1919, and hereinbefore adjudged to be secured thereby; and such bonds and coupons shall be received at such value as would be equivalent to the distributable amount which the holder thereof would be entitled to receive from and out of the

purchase money in case the entire amount of the bid were paid in cash.

It is further ORDERED, ADJUDGED and DECREED, that the funds arising from such sale shall be applied as follows:

(a) To the payment of the expenses of the sale, including the compensation to the Special Master Commissioner;

(b) All outstanding obligations incurred by the receiver, the amount of which is hereafter to be determined, and all valid claims for labor and material furnished and performed within six months prior to the appointment of the receiver herein in the maintenance and operation of said irrigation system, the amount of which is hereafter to be determined.

(c) Costs of suit and the charges, compensation, allowances and disbursements of the complainant, including allowance for attorney's fees.

(d) To the amount found due upon the outstanding bonds secured by said trust deed, as found in this decree, together with interest thereon at 7% per annum from the date of this decree to the date of said sale.

(e) To the payment of the sums secured by the lien of the cross-complainant Boise-Payette Lumber Company as found in this decree, together with interest thereon at 7% per annum from the date of this decree to the date of said sale.

(f) Any surplus remaining in the hands of the Special Master Commissioner shall be by him retained to await the further order of this Court.

It is further ORDERED, ADJUDGED and DECREED that the Special Master Commissioner execute and deliver the deed or deeds of conveyance of the property sold to the purchaser or purchasers thereof but not until after confirmation of the sale. As soon as any sale shall have been made by the said Special Master Commissioner in pursuance of this decree, he shall report the same to this Court for confirmation, and shall from time to time thereafter make such further supplemental reports as shall be necessary to keep the Court advised of his proceedings. And said Special Master Commissioner and said complainant shall deliver to the said purchaser or purchasers, his or their successors or assigns, all and singular the premises, property, rights, interests, assets and franchises hereby directed to be sold, now or then in their possession.

It is further ORDERED, ADJUDGED and DECREED that said purchaser or purchasers of said property, and their successors and assigns, after the confirmation of said sale and the delivery of said conveyance or conveyances, shall hold and possess said property and every part thereof, and all the rights, privileges and franchises appertaining thereto, as fully and completely as the said Pingree Land Company held and enjoyed the same and was entitled to hold and enjoy the same at the date of

the said mortgage or deed of trust, which this action was brought to foreclose, and at any time since, and all the assets, money and property of every description in the custody of said receiver and in the control of this Court, including all the property and assets acquired by said receiver, both before and after the entry of this decree, and shall possess the right to enforce any contract made by the said receiver or by said Pingree Land Company in his or its own name, and shall be entitled to hold and have all and singular the property so conveyed, free and discharged from all rights, claims and liens of the defendant Pingree Land Company, and any of the other defendants herein, save and except as herein otherwise expressly provided.

VIII.

The Court reserves jurisdiction to render any deficiency decree for any amount due upon said mortgage bonds and coupons after the application thereto of the proceeds of the mortgaged property, as herein decreed, and the Court reserves, for further consideration, all matters herein not expressly provided for or adjudicated.

IX.

No matter pertaining to the rights of the settlers to and in said premises, or any part thereof, by virtue of their contracts heretofore entered into with the Pingree Land Company, and no matters pertaining to the rights of the defendant Matkins Operating Company are adjudicated by this decree, but

all such matters are left for adjudication between such parties and the purchaser or purchasers hereunder as they may hereafter arise.

X.

Any party to this action, or any parties interested herein, may at any time apply to this Court for further relief or such modification of the decree in respect to the terms and conditions of the sale or the distribution of the proceeds thereof, or in respect to any other matters not herein named, as may be meet and just and equitable, and jurisdiction of this cause is retained by this Court for all such purposes and for the purpose of enforcing the provisions of this decree.

Dated the 14th day of September, A. D. 1921.

FRANK S. DIETRICH,

Judge.

Endorsed: Filed Sept. 14, 1921.

W. D. McREYNOLDS, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

PETITION FOR APPEAL.

TO THE HONORABLE F. S. DIETRICH, Judge
of the above entitled court:

And now comes Boise-Payette Lumber Company, a corporation, one of the defendants in this action by J. H. Peterson and T. C. Coffin, its attorneys, and feeling itself aggrieved by the final decree of this Court entered on the 14th day of September,

1921, hereby prays that an appeal may be allowed to it from the said decree to the United States Circuit Court of Appeals for the Ninth Circuit and in connection with this petition, your petitioner herewith presents its assignments of errors.

Your petitioner also presents the stipulation entered into between the attorneys for the plaintiff and this defendant, to the effect that this appeal shall not stay proceedings upon sale of the property involved and waiving the furnishing of any bond for costs, and prays that an order may be entered dispensing with any supersedeas or cost bond, allowing this appeal.

J. H. PETERSON,

T. C. COFFIN,

Attorneys for Defendant, Boise-Payette Lumber Company.

Copy received Oct. 15, 1921.

EDWIN SNOW,

Attorney for Plaintiff.

Endorsed: Filed Oct. 26, 1921.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

ASSIGNMENT OF ERRORS.

Now comes the appellant, Boise-Payette Lumber Company, a corporation, by J. H. Peterson, and T. C. Coffin, its attorneys, and in connection with its petition of appeal says, that, in the record, proceedings, and in the final decree aforesaid, manifest

error has intervened to the prejudice of the appellant, to-wit:

1. That the Court erred in not holding as a matter of law that the claim of the Boise-Payette Lumber Company as a sub-contractor for materials furnished was not superior to the mortgage or deed of trust of the plaintiff and appellee, Halloran-Judge Trust Company, in this, to-wit:

That the mortgage or deed of trust of the appellee, Halloran-Judge Trust Company, which was made, executed and delivered on December 31st, 1919, and recorded on January 26th, 1920, was not superior to a claim of lien of the sub-contractor, Boise-Payette Lumber Company, which had a sub-contract for the furnishing of material to Fred A. Wilkie, the original contractor, the original contract and the work thereunder having been respectively executed and begun prior to December 31st, 1919, and the Boise-Payette Lumber Company, the appellant, as a sub-contractor being entitled to have its claim of lien relate back to and be effective as of the date when work began under the original contract, to-wit: December 30th, 1919.

WHEREFORE, The appellant prays that the decree of the United States District Court of the District of Idaho, Eastern Division, made and entered on the 14th day of September, 1921, may be reversed in so far as it is therein held that the mortgage or deed of trust of the appellee, Halloran-Judge Trust Company, is superior and prior to the claim

of lien of the appellant, Boise-Payette Lumber Company.

J. H. PETERSON,

T. C. COFFIN,

Attorneys for Appellant.

Service of the above and foregoing Assignment of Errors, by receipt of copy thereof, admitted this 15th day of October, 1921.

EDWIN SNOW,

Attorney for Appellee.

Endorsed: Filed Oct. 26, 1921.

W. D. McRFYNOLDS, Clerk.

(Title of Court and Cause.)

ORDER ALLOWING APPEAL.

On reading the petition of the Boise-Payette Lumber Company, a corporation, one of the defendants above named, for an order allowing an appeal, and upon reading the assignment of errors of the said Boise-Payette Lumber Company, a corporation, submitted therewith, and upon due consideration of the record in said cause:

It is ordered that an appeal be allowed to the United States Circuit Court of Appeals for the Ninth Circuit from the decree made and entered in this cause on the 14th day of September, 1921, and that citation on appeal be issued, served and returned to the United States Circuit Court of Appeals for the Ninth Circuit in accordance with law;

It appearing to the Court that all the parties

interested in the appeal in this cause have filed in this Court their stipulation waiving supersedeas and cost bond, the appeal is hereby allowed without the furnishing of any bond whatever on behalf of the appellant, Boise-Payette Lumber Company.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of October, 1921, at Pocatello, Idaho.

FRANK S. DIETRICH,
United States District Judge.

Received copy Oct. 15, 1921.

EDWIN SNOW,
Attorney for Plaintiff.

Endorsed: Filed Oct. 26, 1921.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the plaintiff and the defendant Boise-Payette Lumber Company, a corporation, that upon the allowance by the Court of the appeal on behalf of the Boise-Payette Lumber Company no bond for costs on said appeal need be required; that no supersedeas bond is desired or sought by said appellant; that the pendency of said appeal shall in no manner stay any proceedings in execution of the decree in this cause and the judicial sale held thereunder shall be and remain in all re-

spects as valid as if said appeal had not been taken irrespective of the results of said appeal.

That in order to protect the interests of appellant pending said appeal there shall be deposited with the clerk of the above entitled Court, out of such proceeds of said judicial sale as are by the terms of said decree payable to plaintiff, a sum equal to the claim of said defendant Boise-Payette Lumber Company as found in said decree, said sum to remain on deposit with said Court pending and to abide the outcome of said appeal.

Dated this 12th day of October, 1921.

J. H. PETERSON,

T. C. COFFIN,

*Attorneys for Boise-Payette
Lumber Company.*

EDWIN SNOW,

Attorneys for Plaintiff.

Endorsed: Filed Oct. 13, 1921.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

CITATION.

UNITED STATES OF AMERICA,—ss.

TO HALLORAN-JUDGE TRUST COMPANY, a
corporation, as Trustee, plaintiff above named,
GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Ap-

peals for the Ninth Circuit at San Francisco, California, within thirty days from the date of the service of this citation pursuant to an appeal filed in the office of the Clerk of the District Court of the United States for the District of Idaho, Eastern Division, wherein Boise-Payette Lumber Company, a corporation, is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable F. S. Dietrich, Judge of the United States District Court for the District of Idaho, Eastern Division, this 12th day of October, in the year of our Lord One Thousand Nine Hundred and Twenty-one.

FRANK S. DIETRICH,
Judge of United States District Court.

(SEAL)

Attest:

W. D. McREYNOLDS, Clerk.

Service admitted Oct. 15, 1921.

EDWIN SNOW,
Attorney for Plaintiff

Endorsed: Filed Oct. 26, 1921.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

PRAECIPE FOR RECORD.

The Clerk of this Court is hereby directed to prepare and certify a transcript of the record in the above entitled case for the use of the United States Circuit Court of Appeals for the Ninth Circuit by including therein the following:

1. Agreed Statement of Fact.
2. Memorandum Decision, filed August 30, 1921.
3. Decree made and entered September 14th, 1921.
4. Petition for appeal.
5. Assignment of Errors.
6. Order Allowing Appeal.
7. Stipulation Waiving Bond.
8. Citation on Appeal.
9. This Praecipe.
10. Notice of Filing Praecipe.
11. Clerk's Return.
12. Such other papers as from the record in this cause of right should be included in the said transcript of the record on appeal.

J. H. PETERSON,
T. C. COFFIN,
Attorneys for Appellant.

Endorsed: Filed Oct. 26, 1921.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

NOTICE OF FILING PRAECIPE.

To EDWIN SNOW, Attorney for Appellee:

PLEASE TAKE NOTICE that on the 13th day of October, 1921, the undersigned filed with the Clerk of this Court a Praecipe for the record to be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit on appeal taken in the above cause, a copy of which praecipe is herewith served upon you.

Dated this 13th day of October, 1921.

J. H. PETERSON,

T. C. COFFIN,

Attorney for Appellant.

Service of the foregoing Notice of Filing Praecipe together with copy of Praecipe for Record admitted this 15th day of October, 1921.

Attorney for Appellee.

EDWIN SNOW,

Endorsed: Filed Oct. 26, 1921.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

CLERK'S CERTIFICATE.

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages

numbered 1 to 45, inclusive, to be full, true and correct copies of the pleadings and proceedings in the above entitled cause, and that the same, together, constitute the transcript of the record herein, upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, as requested by the praecipe filed herein.

I further certify that the cost of the record herein amounts to the sum of \$52.90 and that the same has been paid by the Appellant.

Witness my hand and the seal of said Court this 23rd day of November, 1921.

W. D. McREYNOLDS,

(SEAL)

Clerk.

